IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.08.2007

1. **Criminal Appeal No. 725-DB of 1997**

Raj bir .....*Appellant*

Versus

State of Haryana .....*Respondent*

2. ***Criminal Appeal No. 48-DB of 1998***

Raj Rani etc. .....*Appellants*

Versus

State of Haryana .....*Respondent*

3. ***Criminal Appeal No. 132-DB of 1998***

Raj Rani .....*Appellant*

Versus

State of Haryana .....*Respondent*

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE NIRMAL YADAV
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Present: Mr.,Vivek Singla, Advocate with
Mr. Rajbir, Advocate
for the appellants

Mr. Deepak Girotra, Assistant Advocate General, Haryana
for the respondent State
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NIRMAL YADAV, J.

Three Criminal appeals i.e. (i) Criminal Appeal No. 725-DB of

1997, filed by Rajbir; (ii) Criminal Appeal No. 48-DB of 1998, filed by Raj Rani and Rohtash; and (iii) Criminal Appeal No.132-DB of 1998, filed by Raj Rani, shall be disposed of by this common judgement, having been arisen out of one and the same judgement of conviction and order of sentence dated 21.10.1997 and 24.10.1997, respectively passed by the learned Sessions Judge, Sonepat. For facility of reference, facts are being taken from Criminal Appeal No. 725-DB of 1997.

Accused Raj Rani, Rohtash and Rajbir were tried for offence under Section 120-B and 302 read with 34 I.P.C., for committing murder of Prem Singh, husband of accused Raj Rani, after hatching conspiracy with one another.

Facts, in brief, are that Prem Singh (since deceased) had retired from Army. He was married to Raj Rani. Out of their wedlock, two children, namely, Mamta (PW2) and Ashok Kumar (PW5) were born. After his retirement, Prem Singh started working as a Security Guard in Sugar Mill, Sonepat and had been commuting daily to his village Turukpur on a bicycle. His duty hours were from 5.00 PM to 1.00 AM. In the morning of 13.03.1993, at about 7.30 AM, Jagdev Singh, Sarpanch informed Narain Singh that the dead body of his brother Prem Singh was lying on the road side towards village Kanwali. Narain Singh went to the place of occurrence and found the dead body of Prem Singh lying on left side of road near the culvert. He found a wide injury on the neck underneath the left ear and another injury on the front portion of the neck. Narain Singh had not named any one as assailants, as Prem Singh had no enmity with any person

in the village nor he suspected any other individual for the said crime. He reported the matter to the police. ASI Daya Chand (PW12) recorded his statement, Ex. PE/2, on the basis of which, FIR EX PE/5 was recorded. The Investigating Officer conducted inquest proceedings and prepared inquest report EX PE/1.

After completion of investigation, the case was filed as un-traced. However, on 07.01.1994, an application Ex DD was moved by Narain Singh and Beg Raj to the Superintendent of Police, Sonepat, stating therein that earlier they did not suspect anyone in connection with the murder of their brother Prem Singh, but now they had come to know about the complicity of Raj Rani wife of Prem Singh with Rohtas and Rajbir, for committing murder of Prem Singh. It was also mentioned that Rohtas had abducted Raj Rani a month prior to submitting the application along with money and jewellery. Therefore, a request was made for initiating action against Raj Rani, Rohtas and Rajbir. PW13 Sukhbir Singh, retired Sub Inspector deposed that on the basis of application Ex DD, investigation was re-started. He recorded statements of Mamta daughter of Prem Singh, Ran Singh and Narain Singh on 09.01.1994. Thereafter, the investigation was handed over to ASI Ram Chander, who recorded statements of PW7 Ravinder and PW5 Ashok Kumar on 16.01.1994 and 17.01.1994 respectively.

Accused Rajbir and Raj Rani were produced by Beg Raj and they were arrested on 19.01.1994. Rohtas was also arrested on the same day. On 20.01.1994, Rajbir and Raj Rani made disclosure statements Ex. PJ and

Ex PK. Pursuant to his disclosure statement, Rohtas got recovered *kulhari* (axe) Ex P1, which was taken into possession vide memo EX PF. Raj Rani in pursuance of her disclosure statement, got recovered the bank pass-book Ex PG. He also recorded statements of other witnesses. PW2 Mamta daughter of Prem Singh (deceased) disclosed that on the night intervening 12/13.03.1993, Rajbir and Rohtas, whom she had known earlier, came to their house. Rohtas was having *kulhar*i (axe) hidden under his *chaddar* while Rajbir was empty handed. When her mother Raj Rani was talking to them, she was not allowed to hear their conversation. However, she heard her mother telling Rajbir and Rohtas that "he (Prem Singh) shall certainly come home" from a distance. Thereafter, both of them stated "*we shall complete the work to night"* and left the house. According to her, both the accused (Rohtas and Rajbir) had been meeting her mother even after murder of her father. A few months thereafter, her mother (Raj Rani) took her (Mamta) and her brother Ashok Kumar to the house of her maternal uncle in village Nooran Majra. Even there, accused Rohtas and Rajbir had been visiting her mother. Only a month prior to recording of statement of Mamta, Raj Rani left her brother's house along with Rohtas and Rajbir. On the basis of above said facts, Mamta stated that it appears that her mother in conspiracy with Rohtas and Rajbir had murdered her father.

Thereafter, supplementary statement of Narain Singh, EX DC was recorded on 19.01.1994. He reiterated his earlier statement made before the police, but further added that Raj Rani and Rajbir accused approached him and his brother Beg Raj and begged for pardon, as they were closely

associated with the case. Raj Rani disclosed that she had illicit relations with Rajbir and Rohtas since long. Her husband having come to know about this fact, had been harassing her. He had declared that he would kill her. About ten days prior to the occurrence, she met Rajbir and Rohtas in the fields and disclosed all the facts to them. Rajbir and Rohtas promised to remove Prem Singh from their way, however, it would cost her a sum of Rs.10,000/-. Accordingly, on 12.03.1993, at about 10.00 p.m., Rohtas armed with *kulhari* (axe) and Rajbir empty handed, came to their house and plan was finalised. She disclosed to them that her husband would be returning home at about 1.00 a.m. from his duty. Accordingly, both Rajbir and Rohtas fulfilled their promise and committed the murder of Prem Singh. About one month thereafter, she withdrew Rs.10,000/- from the Nahra Bank and Punjab National Bank and handed over the same to Rajbir. After 4/ 5 months, she went to her father's house, where also Rajbir and Rohtas had been meeting her. Narain Singh further disclosed that about one month back, Raj Rani had gone with Rohtas and Rajbir from her father's village Noona Majra and got married to Rohtas in the Court at Delhi. Therefore, Narain Singh, produced both of them before the police.

On completion of investigation, the accused were challaned and charge-sheeted under Section 120-B and 302 read with Section 34 IPC.

In order to prove its case, the prosecution has examined as many as 13 witnesses.

Accused when examined under Section 313 Cr.P.C., denied the allegations and pleaded innocence. Accused Rajbir tendered into evidence

copy of Civil suit titled as Phool Kumar Vs. Ram Chander etc. EX DF, Marriage Card Ex.DG and closed his defence. Accused Raj Rani stated that her brother-in-law Narain Singh (husband's brother), who is an Ex-police official, had turned her out of the matrimonial home and has falsely implicated her, along with her co-accused in order to grab her property. Accused Rohtas also stated in the same terms. However, accused Rajbir stated that he was lodged in the lock-up along with one of the relations of the complainant, whose eye was damaged while he was working at the residence of Deputy Superintendent (Jail), therefore, complainant wanted me to depose against the Deputy Superintendent (Jail). When he refused to oblige him, he was falsely implicated in this case.

We have heard the learned counsel for the parties and have gone through the entire evidence on record.

The prosecution case mainly rests on the testimony of PW2 Mamta, PW 5 Ashok Kumar, children of Raj Rani accused and Prem Singh (deceased), PW7 Ravinder son of Narain Singh's wife's sister and PW8 Narain Singh, brother of deceased Prem Singh.

Learned counsel for the appellants vehemently argued that initially complainant Narain Singh did not have suspicion on any one. In case, Raj Rani had illicit relations with Rohtas and Rajbir, it must have been in the knowledge of all the family members. It has come in the testimony of both PW2 Mamta and PW5 Ashok Kumar that accused Rajbir and Rohtas had been meeting their mother Raj Rani, even prior to the occurrence and then after the murder of their father and even when went to stay with her

parents. It is pointed out that there was not even a whisper from any one during investigation. None of the family members ever complained or disclosed anything in this regard. He further referred to the statement of Mamta, wherein she stated that at about 10.00 P.M. on 12.03.1993, Rajbir and Rohtas came to their house to meet her mother. Rohtas was carrying a kulhari covered under a sheet, while Rajbir was empty handed. As per her statement, they were talking to her mother in a very surreptitious and mysterious manner. She is about 12/13 years old, therefore, she could very well infer from the conduct of both Rohtas and Rajbir that something wrong was going on between her mother Raj Rani and accused Rohtas and Rajbir. But she did not disclose anything even after the murder of her father to any of her uncle or the police official. Her statement was recorded by the Investigating Officer after about 10 months of the occurrence i.e. on 09.01.1994. It does not appeal to reason that a grown up girl would understand from the behaviour of the three accused and more so, when Rohtas was carrying a *kulhari* with him. She has further stated that accused had been meeting her mother when she went to stay with her parents in village Noona Majra. She has admitted that she remained in the house of her father's village for a period of six months after the murder of her father and continued to meet her friends and other ladies of the village. During this period, she did not disclose about the visit of Rajbir and Rohtas and about any conspiracy between them and her mother. She has admitted having known that her mother has performed second marriage with accused Rohtas. She has of course denied that due to this reason, her uncles and

other family members are annoyed with Raj Rani or that she has been falsely implicated on this account.

The testimony of PW5 Ashok Kumar has been challenged by the learned counsel for the appellants. It is argued that his statement, EX DB, was recorded on 17.01.1994. Even while deposing before the Court, he did not say a word about the complicity of any of the accused with regard to murder of his father Prem Singh. He has simply deposed that his mother Raj Rani had withdrawn Rs.3,000/- from the Central Co-op Bank, Nahra on 17.04.1993 and Rs.7100/- from the Punjab National Bank, Sonepat on 19.04.1993 and she had given Rs.10,000/- to Rajbir as a loan. Whenever, he asked about the said amount, she had been putting him off by saying that Rajbir would return the said amount. He further stated that her mother has accompanied Rohtas and performed marriage with him. In cross examination, he admitted that he did not disclose to any one that his mother was having illicit relations with Rohtas accused.

Even, PW8 Narain Singh, initially did not have any suspicion on any of the accused for having caused murder of his brother Prem Singh. According to him, after the murder of Prem Singh, Raj Rani remained in the matrimonial home for some time, but later on she shifted to the house of her parents along with her children. Both the accused had been visiting her at her parents house. In his statement, Ex DC, Narain Singh stated that both Raj Rani and Rajbir have made extra judicial confession before him and Beg Raj. However, while deposing before the court, he has stated that accused Raj Rani and Rajbir met him and his brother Beg Raj at Turukpur turning

and Rajbir made disclosure statement. He has categorically stated that Raj Rani did not make any extra judicial confession before them, when her co-accused made the aforesaid extra judicial confession. He has made material improvements from his earlier statement made before the police. He has admitted that Mamta and Ashok Kumar, children of Raj Rani, did not disclose anything about the occurrence. He further admitted that he did not disclose the names of the culprits to S.P. Sonepat.

Even statement of PW9 Beg Raj does not help the prosecution in any case. According to him, accused Rohtas and Rajbir were having illicit relations with Raj Rani and his brother Prem Singh used to admonish her. Therefore, Rohtas and Rajbir decided to remove him (Prem Singh) out of their way. Admittedly, his statement was never recorded by the Investigating Officer. Learned Public Prosecutor admitted that his statement does not exist on the police record though the same is alleged to have been recorded by the police on 13.03.1993. This witness stated that he knew about the illicit relations of Raj Rani with Rohtas and Rajbir. If that was so, the Investigating Officer would have certainly proceeded to investigate the case on these lines. The statement of this witness is belied from the testimony of PW11, when he stated that he recorded the statement of Narain Singh and Beg Raj on 19.01.1994.

From the testimony of all the four witnesses, it is evident that Raj Rani got married to Rohtas accused, a few months after the occurrence and it is only thereafter, a suspicion had aroused in the mind of the relatives of deceased. Accordingly, Narain Singh and Beg Raj, brothers of deceased

moved application EX DD, to the Superintendent of Police, Sonepat for the re-investigation of the case.

A reading of application, EX DD shows that initially relatives of Prem Singh did not have any clue as to who had committed the murder of Prem Singh. But immediately before submitting application, they had come to know that Raj Rani, Rohtas and Rajbir were associated with the murder of Prem Singh, as Rohtas had abducted Raj Rani a month prior to the filing of the application along with money and some jewellery. They expressed suspicion only on the basis of Raj Rani having contracted marriage with Rohtas accused. Prior to that period, there was not even any iota of suspicion with regard to Raj Rani having illicit relations with Rohtas accused. However, neither PW2 Mamta nor PW5 Ashok Kumar, both children of Prem Singh, disclosed this fact to any of the family members.

Even making of extra judicial confession before Narain Singh and Beg Singh does not appear to be plausible. It does not appeal to reason that accused Raj Rani and Rajbir would expect any help from Narain Singh brother of Prem Singh deceased. Moreover, there is material contradiction with regard to making extra judicial confession. In EX DC, Narain Singh stated that both Raj Rani and Rajbir made extra judicial confession statements. However, while appearing in Court, he categorically stated that Raj Rani had not made any extra judicial confession. We are not inclined to accept this piece of evidence.

The testimony of PW7 Ravinder also does not inspire confidence. According to him, on the fateful day, at about 1.00 A.M, he was

going to fetch milk on his motor cycle. The statement of this witness appears to be imaginary, as no one would go at the mid of night to fetch milk. It could be possible if it was at about 4 or 5 A.M., but not in the night at 1.00 A.M. He further states that he saw Prem Singh lying dead and two persons standing by his side. One of them, armed with *kulhari* (Axe) and another empty handed. He has further stated that he knew both the accused for the last many years. But surprisingly, even after seeing the dead body and the accused, he went away to the village to fetch milk. His conduct is highly un-naturual. Admittedly, his mother's sister is married to Narain Singh. But he did not disclose any thing about having seen the deceased and the accused to his mother. In such a situation, any normal human being would immediately like to inform his close relations about what he had seen.

We are quite surprised to note that in para 26 of the judgement, learned trial Court has made out altogether a different story, while observing thus::-

> *".....The greatest circumstances in the case in hand is that Prem Singh married Raj Rani. Prem Singh in his young age joined Army, served for 18 years. He had been visiting his house, once in a year after every 10 months for two months leave. Taking benefit of that long absence of her husbad, Raj Rani established her illicit relations to satisfy her lust of sex with Rohtash and Rajbir. They have been regularly visiting her in the absence of Prem Singh and when Prem Singh came in his village Turukpur after*

his retirement, he searched job for Sugar Mills and got himself employed as Security Guard. He used to be daily passenger from village Turukpur to Sonipat on bi-cycle. Again, taking benefit of absence of Prem Singh, Rohtash and Rajbir continued their illicit relations with Raj Rani and when it came to knowledge of Prem Singh, he asked Raj Rani to discontinue her relations. He had been admonishing her keeping in view the LOK LAAJ, but Raj Rani did not take a note of it and took undue advantage of leniency of her husband."

From the circumstances and evidence discussed above, the above stated facts are not substantiated, rather it appears that it is a case of blind murder as there was no clue with regard to the assailants of deceased. It was only after accused Raj Rani wife of deceased Prem Singh, had contracted marriage with accused Rohtas, the family members of deceased levelled allegations that Raj Rani was having illicit relations with accused Rohtas and Rajbir and in conspiracy with Raj Rani, Rohtas and Rajbir, had committed murder of Prem Singh. The entire story appears to have been fabricated after a lapse of about 9/10 months. Admittedly, supplementary statement of Narain Singh was recorded on 19.01.1994, whereas statements of PW2 Mamta and PW5 Ashok were recorded on 09.01.1994 and 17.01.1994 respectively. Similarly, statement of PW7 Ravinder was recorded after the case was re-investigated on the basis of application EX DD, moved by Narain Singh and Beg Raj.

The above facts are not corroborated by any cogent and trustworthy documentary as well as oral evidence on record. At the cost of repetition, it may be summarised that prior to 09.01.1994, none of the witnesses stated that Raj Rani was having illicit relations with Rohtas and Rajbir by taking the benefit of long absence of her husband (Prem Singh) being in Army.

In view of the above discussed facts, we are of the view that the prosecution has not been able to prove its case beyond reasonable shadow of doubt and the testimony of none of the witnesses inspire confidence, therefore, conviction cannot be sustained on the basis of weak and untrustworthy evidence.

Accordingly, all the three Criminal Appeals are allowed, both judgement of conviction and order of sentence are set aside and all the accused, namely Raj Rani, Rohtas and Rajbir, are acquitted of the charges levelled against them.

(NIRMAL YADAV)
JUDGE

(JASBIR SINGH)
JUDGE

August 20, 2007
mohan